

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Oregon State Office
P.O. Box 2965
Portland, OR 97208

In Reply Refer to:
5400 (OR-931) P

March 18, 2004

EMS TRANSMISSION 03/22/2004
Instruction Memorandum No. OR-2004-056
Expires: 9/30/2005

To: District Managers: Coos Bay, Eugene, Lakeview, Medford, Roseburg, and Salem

From: State Director, Oregon/Washington

Subject: Lifting Suspension on Timber Sales

Program Area: Forestry - Timber Management.

Purpose: This Instruction Memorandum (IM) provides direction for lifting the suspension on sold, awarded timber sale contracts suspended as a result of having incomplete consultation with National Oceanic and Atmospheric Administration (NOAA) Fisheries and where the species of concern is the Oregon coastal coho salmon.

Policy/Action: For all sold, awarded, and suspended timber sales, review the circumstances that resulted in the suspension. These circumstances could include consultation issues, Survey and Manage issues, or orders for stays or remands by the Interior Board of Land Appeals. Districts are reminded that consultation with NOAA Fisheries is still required under the Magnuson-Stevenson Fisheries Conservation and Management Act of 1996 if: (1) the action will result in an adverse effect on Essential Fish Habitat (EFH) for coho or Chinook salmon species; and (2) the Notice of Decision date of the action is after the effective date of Amendment 14 to the Pacific Coast Fishery Management Plan for Chinook salmon, coho salmon, and Puget Sound pink salmon. The effective date of Amendment 14, which includes the requirement for EFH consultation, was September 27, 2000. Sales where the decisions were remanded to the Bureau of Land Management (BLM) or set aside by the Interior Board of Land Appeals may be subject to the above conditions. Upon verification that the only original or remaining reason for the suspension of the timber sale is not having completed consultation with NOAA Fisheries for the Oregon coastal coho salmon, you are instructed to immediately lift the suspension of activities under the timber sale contract. A sample letter for use in lifting the suspension is attached.

For sales with circumstances that preclude immediate lifting of the suspension, the district shall prepare a letter to the purchaser describing the situation that requires the sale to remain suspended and outlining the steps the district is taking to resolve any issues. The letter should state the reason that the sale remains suspended and cite the appropriate section of the contract requirements.

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Timeframe: Upon receipt.

Budget Impact: None.

Background: The BLM has several sold, awarded timber sale contracts that are suspended under the discretionary authority provided by special contract provision E-4. These suspensions were issued after the Pacific Coast Federation

of Fishermen's Associations et al. v. National Marine Fisheries Service lawsuits resulted in incomplete consultation on fish species listed under the Endangered Species Act. The Ninth Circuit Court of Appeals recently dismissed appeals and lifted the stay on the District Court of Oregon order in Alsea Valley Alliance, and Mark Sehl, v. Donald Evans et al. No. 99-6265-HO, setting aside the August 10, 1998, Endangered Species Act listing of the Oregon coastal coho salmon by NOAA Fisheries. The BLM has determined that, in light of the court's orders, the basis for the contract suspension is no longer valid where it was based on the lack of completed consultation for that species.

Manual/Handbook Sections Affected: None.

Coordination: Coordination has occurred with Roger Nesbit of the Regional Solicitor's Office.

Contact: If there are questions, contact Lyndon Werner (OR-931) at 503-808-6071 or Alan Wood (OR-931) at 503-808-6072.

Districts with Unions are reminded to notify their unions of this IM and satisfy any bargaining obligations before implementation. Your servicing Human Resources Office or Labor Relations Specialist can provide you assistance in this matter.

Signed by
A. Baron Bail
Acting Associate State Director

Authenticated by
Mary O'Leary
Management Assistant

1 Attachment(s)

1 - [Sample Letter to Purchaser](#) (1p)

Distribution

WO-230 (204LS)
OR-014 (Rod Johnson)
OR-082 (Jeffrey Gordon)
OR-090 (Dave DeMoss)
OR-100 (Steven Niles)
OR-110 (Dave Roche)
OR-120 (Jon Menten)

Dear Purchaser:

Please refer to your Bureau of Land Management (BLM) [SALE NAME] contract No. OR [CONTRACT NUMBER]. On February 24, 2004, the United States Court of Appeals for the Ninth Circuit issued an order Dismissing the Appeals and Dissolving the Stay Pending Appeal of the September 10, 2001, order in Alsea Valley Alliance, and Mark Sehl, v. Donald Evans et al. No. 99-6265-HO, in the United States District Court for the District of Oregon. As a result of the Ninth Circuit Stay, the BLM had issued a suspension letter for the [SALE NAME] timber sale on [SUSPENSION DATE], under the discretionary authority provided by Section 41 [CONTRACT SECTION] of the special provisions of the contract.

The BLM has determined that, in light of the court's order, the basis for the contract suspension under Section 41 [CONTRACT SECTION] of your contract is no longer valid. Therefore, effective immediately, the suspension of operations on the [SALE NAME] timber sale is lifted, and operations may proceed in accordance with the provisions of the contract.

The BLM regulations at 43 CFR, subpart 5473, provide that in the event of a delay resulting from a court injunction obtained by a party outside of the contract, and if you have performed as the average prudent operator would be expected to perform in a like time period prior to the delaying event, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to the operating time lost. In order to be considered, written requests for extension should be delivered to the appropriate BLM office prior to the expiration of the original time for cutting and removal.

Add this paragraph if your contract contains the version of the E-4 Special Provision issued in Instruction Memorandum No. OR-99-036.

Section 41 [CONTRACT SECTION] provides that "[i]n the event that operating time is lost as a result of the incorporation of additional contract requirements, or delays due to Endangered Species Act consultation with the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration Fisheries, or court injunctions, the Purchaser agrees that an extension of time, without reappraisal, will constitute a full and complete remedy for any claim that delays due to the suspension hindered performance of the contract or resulted in damages of any kind to the Purchaser."

Please contact [_____] at [_____] if you have any questions.

Attachment 1